Supreme Court, U.S.
FILED

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IN THE

SUPREME COURT OF THE UNITED STATES

Jean Development Company dba Gold Strike
Hotel and Gambling Hall,
Petitioner,

v.

The Superior Court of the State of California,
County of Los Angeles,
Respondent.

Allison Bernard, et al..,
Real Parties In Interest.

On Petition For Writ Of Certiorari To The Superior Court
of the State of California, County of Los Angeles

PETITION FOR WRIT OF CERTIORARI

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dba GOLD STRIKE HOTEL and GAMBLING HALL

I.

QUESTION PRESENTED FOR REVIEW

Whether it is a violation of Due Process Rights under the Fourteenth Amendment for the California courts to exercise personal jurisdiction over a Nevada Casino/Hotel that is domiciled and conducts business exclusively in Nevada and that has no minimum contacts in California?

II.

PARTIES

Petitioner:	Jean Development Company dba Gold Strike Hotel and Gambling Hall
Respondent:	The Superior Court of the State of California, County of Los Angeles
Real Parties In Interest:	Allison Bernard, Erma Simon, Marina Lopez, Jose Cerna, and Hebaragi & Lemi Bus, Inc.

III.

JURISDICTIONAL STATEMENT

The California Supreme Court denied Petitioner JEAN DEVELOPMENT COMPANY, dba GOLD STRIKE HOTEL and GAMBLING HALL, Petition for Review on October 15, 2003. 28 U.S.C. § 1257(a) authorizes this Court to review the California Supreme Court's order denying the Petition for Review.

IV.

CONSTITUTIONAL PROVISIONS IN QUESTION

"All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the law." (U.S. CONST. amend. XIV § 1.)

V.

CORPORATE DISCLOSURE STATEMENT

Petitioner Jean Development Company dba Gold Strike Hotel and Gambling Hall is a Nevada Partnership owned and operated by Nevada Corporations.

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VI.

STATEMENT OF THE CASE

This case involves violation of constitutional rights to due process and the exercise of personal jurisdiction. State courts may not extend personal jurisdiction over nonresident defendants who do not have the requisite minimum contacts with the forum state without violating the nonresident defendant's due process rights under the Fourteenth Amendment. (See International Shoe Co. v. Washington 326 U.S. 310, 316 (1945) .) Indeed, the foreign entity's conduct and connection with the forum state must be "such that [the foreign entity] should reasonably anticipate being haled into court there." (World-Wide Volkswagen Corp. v. Woodson 444 U.S. 286, 291(1980).) The standard in California, which is the same as the federal standard, is that California courts may not exercise personal jurisdiction over a foreign entity that unless the entity has "substantial and systematic contacts" with California, or the entity has "purposefully availed" itself of forum state benefits and the controversy is related to or arises out of the entity's contacts with California. (Vons Companies, Inc. v. Seabest Foods 14 Cal.4th 434 (1996).)

Here, Petitioner JEAN DEVELOPMENT COMPANY, dba GOLD STRIKE HOTEL and GAMBLING HALL, ("JEAN DEVELOPMENT") is a Nevada Partnership owned by Nevada Corporations and operating a casino/hotel in Nevada, that is being sued by California residents for injuries sustained while traveling in California. JEAN DEVELOPMENT lacks the requisite minimum contacts with California and it did not purposefully avail itself of California's benefits. However, the California courts found that JEAN DEVELOPMENT is subject to personal jurisdiction. (See Appendix ["App."], pp. 001-005.) The California appellate courts, including the California Supreme Court, have continued to violate JEAN DEVELOPMENT's constitutional due process rights and the well-established rules of personal jurisdiction by allowing the California courts to extend personal jurisdiction over JEAN DEVELOPMENT. (See App., pp. 001-002.)

This issue is of great importance to all United States' citizens

and to those foreign casino/hotels incorporated, domiciled and doing business exclusively outside the forum state where suit was brought. In this case, hundreds of thousands of California residents travel by bus and private automobile each year to Nevada casino/hotels, and many of them bring suit in California against the casino/hotel after allegedly being injured while traveling to or from the casino/hotel. Therefore, to prevent continued due process violations and further prejudice through the erroneous exercise of personal jurisdiction over foreign casino/hotels, such as JEAN DEVELOPMENT, this Court should grant review of the California Supreme's Court's order denying JEAN DEVELOPMENT's Petition for Review.

VII.

LEGAL ARGUMENT

A. IT IS A VIOLATION OF THE FOURTEENTH AMENDMENT DUE PROCESS RIGHTS FOR STATE COURTS TO EXERCISE PERSONAL JURISDICTION OVER FOREIGN CASINO/HOTEL THAT DOES NOT HAVE THE REQUISITE MINIMUM CONTACTS WITH THE FORUM STATE.

This Court has made it clear that it is a violation of due process rights under the Fourteenth Amendment of the United States Constitution to exercise personal jurisdiction over a foreign entity, unless it can be shown that the foreign entity has sufficient minimum contacts with the forum state. (International Shoe Co. v. Washington 326 U.S. 310, 316 (1945).) The Fourteenth Amendment provides:

> All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein

> they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the law.

California Code of Civil Procedure, section 410.10, further provides that "[a] court of this state may exercise jurisdiction on any basis not inconsistent with the Constitution of this state or of the United States."

The standard for exercising personal jurisdiction by a California state court is inherently the same as the federal standard. Indeed, in Vons Companies, Inc. v. Seabest Foods, Inc., 14 Cal.4th 434 (1996), the California Supreme Court held that California courts may not exercise general or specific personal jurisdiction over a foreign entity unless the foreign entity has "substantial and systematic contacts" in California, or the foreign entity has "purposefully availed" itself of forum state benefits and the controversy is related to or arises out of the foreign entity's contacts with California.

Despite the clear parameters for exercising personal jurisdiction, the California courts violated JEAN DEVELOPMENT's constitutional rights to due process by holding that JEAN DEVELOPMENT, a Nevada Partnership owned by Nevada Corporations and operating a casino/hotel in Nevada, may be haled into a California court to defend itself against a lawsuit involving injuries sustained by a California resident while traveling in California. (See App., pp. 001-005.)

1. **Exercising General Personal Jurisdiction Over JEAN DEVELOPMENT CO. Is a Violation Of Its Constitutional Due Process Rights As It Does Not Have "Substantial , Continuous and Systematic" Contacts In California.**

General personal jurisdiction exists only when the foreign entity is domiciled in the forum state or its activities in the forum state are "substantial, continuous and systematic." (Helicopteros Nacionales de Colombia S.A. v. Hall 466 U.S. 408, 414 (1984).) In other words, the foreign entity's conduct and connection with the forum state must be "such that [the foreign entity] should reasonably anticipate being haled into court there." (World-Wide Volkswagen Corp. v. Woodson 444 U.S. 286, 291 (1980); *in accord* Cornelison v. Chaney (1976) 16 Cal.3d 143, 147.)

Here, the facts show that JEAN DEVELOPMENT CO. does not have "substantial and systematic contacts" in California, and as such, it is not subject to personal jurisdiction in California. JEAN DEVELOPMENT CO. operates exclusively in Nevada, and its only contact with California is through those California residents who travel to Nevada to gamble at its casino, the Gold Strike. There is a difference between doing business *with* California residents who travel to the Gold Strike, and doing business *in* California. (See Gator.com v. L.L. Bean, Inc. 2001WL 1528393 (N.D. Cal. 2001) [found that doing business with residents of forum state is not the kind of activity that approximates physical presence within the forum state's borders].)

The Ninth Circuit also has held that the California courts lack general personal jurisdiction over Nevada casinos. In Alexander v. Circus Circus Enterprises, Inc., 939 F.2d 847 (9th Cir. 1991), the Ninth Circuit held that advertising or promotional activities within California alone were not sufficient to invoke general jurisdiction over a Nevada Casino. Similarly, in Circus Circus Hotels, Inc. v. Superior Ct., 120 Cal.App.3d 546 (1981), a family from Orange County filed suit in California against Circus Circus after their hotel room was purportedly burglarized. The California Court of Appeal held that although Circus Circus maintained an "800" number and advertised in California, Circus Circus' activities in California were not so substantial and wide-ranging

as to establish general personal jurisdiction. (Id.) The court reasoned that Circus Circus was not "doing business" in a legal sense so as to permit the court to exercise general personal jurisdiction over it. (Id.)

Despite the well-established rules that a foreign casino/hotel's contacts with California residents who travel to its casino to gamble cannot be deemed as "substantial and systematic contact" in California, the trial court determined, and the appellate courts affirmed, that JEAN DEVELOPMENT is subject to personal jurisdiction because it has "substantial and systematic contact" in California.

The Court may take judicial notice of the fact that hundreds of thousands of California residents travel to Nevada Casino/Hotels each year. The Court also may take judicial notice that many of those visitors travel by bus or private automobile are involved in accidents traveling to and from Nevada. Thus, without review, the judicial system will continue to be overburdened, judicial resources will continue to be wasted by zealous plaintiffs naming foreign casino/hotels as defendants and personal jurisdiction being invoked where it clearly is not constitutional.

2. It Also Is a Violation Of Constitutional Due Process Rights For California To Invoke Specific Personal Jurisdiction Over JEAN DEVELOPMENT CO., As It Has Not Purposefully Availed Itself Of California's Benefits.

In addition, to not being subject to general personal jurisdiction, JEAN DEVELOPMENT is not subject to specific personal jurisdiction. To exercise specific personal jurisdiction over a foreign casino/hotel, it must be established that: (1) the foreign casino/hotel has purposefully availed itself of forum state benefits, (2) the controversy is related to or arises out of the foreign casino/hotel's contacts with the forum state; and (3), the assertion of personal jurisdiction comports with "traditional notions of fair play and substantial justice." (International Shoe, supra, 326 U.S. 310, 316 (1945.) Foreign casino/hotel owners, such as JEAN DEVELOPMENT, cannot be deemed to have purposefully availed themselves of the privilege of conducting activities within the forum state when they do not operate in the forum state, they have not

invoked the benefits and protections of the laws of the forum state, or they have not committed any acts or transactions in the forum state which are germane to the subject lawsuit which arises out of a bus accident in the forum state.

It is not the quantity, but the nature, quality, and extent of the foreign casino/hotel's actions which determine whether a forum state has jurisdiction in each particular case. (Hanson v. Denckla 357 U.S. 235, 253 (1958).) Thus, where there are no facts which reflect the nature, quality and extent of the foreign casino/hotel's actions, California courts cannot exercise personal jurisdiction. In the instant case, JEAN DEVELOPMENT does not own, is not part of a joint venture, and does not have an employment or agency relationship with the bus company which owned and operated the bus involved in the accident. Under these facts, none of the other defendants' conduct may be imputed to JEAN DEVELOPMENT.

In addition, the exercise of personal jurisdiction over foreign casino/hotels for alleged injuries arising out an accident in the forum state does not comport with the "traditional notions of fair play and substantial justice." The alleged injuries in this case were exclusively caused by the wholly-independent transportation companies who are domiciled in California. It certainly offends the "traditional notions of fair play and substantial justice" to require foreign casino/hotels, such as JEAN DEVELOPMENT, to come to California and defend themselves when they have committed no acts in California and have no connection with the alleged accident.

Indeed, were the plaintiffs injured while passengers in a private automobile traveling to or from a Nevada casino/hotel, the casino/hotel owner could not be haled into a California courtroom to defend itself, even if the casino/hotel owner advertised in California. The outcome should not any different where the accident in dispute involves two buses owned and operated by California corporations and over which the foreign casino/hotel owner had no control.

B. FOREIGN CASINO/HOTELS, SUCH AS JEAN DEVELOPMENT CO., HAVE NO ADEQUATE REMEDY TO CORRECT THE CONTINUED VIOLATION OF THEIR CONSTITUTIONAL DUE PROCESS RIGHTS OTHER THAN WRIT RELIEF, ACCORDINGLY A WRIT SHOULD BE ISSUED TO PREVENT SUCH VIOLATIONS FROM RECURRING.

Without review of this case, the constitutional due process rights of foreign casino/hotels, such as JEAN DEVELOPMENT, will continue to be violated through the erroneous exercise of personal jurisdiction over them. Further, requiring such foreign casino/hotels to appear in California and defend themselves against suits arising out of automobile accidents when there is no valid basis for personal jurisdiction will waste valuable judicial resources and cause the parties to incur unnecessary costs that could be avoided by issuing a writ to review this issue.

VIII.

CONCLUSION

For all the foregoing reasons, Petitioner JEAN DEVELOPMENT COMPANY respectfully requests that this Court issue a writ of certiorari on the issues raised herein.

DATED: January 23, 2004

Respectfully submitted,
HARRINGTON, FOXX, DUBROW & CANTER

By: _____
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